

### REMARKS

This amendment is in response to the Office Action dated June 9, 2005. Reconsideration of the application as amended is respectfully requested.

**I. Status of the Claims:**

Claims 4-6 have been added. No new matter is added.

Claims 1-6 are pending.

## II. Rejection under 35 U.S.C. § 103:

Claims 1-3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,910,712 to Schaich et al. ("Schaich") in view of U.S. Patent No. 6,511,243 to Miranda ("Miranda"). The Examiner states that Schaich discloses all of the features of the claimed invention except that the cap can act as a seating surface. The Examiner also states that Miranda discloses a ball-type applicator wherein the cap has a flat surface in order to enable the cap to act as a seating surface for enabling the device to be stored in an inverted fashion. The Examiner contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the cap and body of the Schaich device could be designed such that the cap can act as a seating surface in order to enable the device to be stored in an inverted fashion. Applicant respectfully traverses the rejection.

Applicant submits that Schaich teaches away from the claimed invention. Schaich discloses a ball-type dispensing package having a closure in which “a disk shaped gasket 14 may be provided,” (*see*, Schaich, column 3, line 28) wherein “the central portion of the gasket 14 is stretchably deformed into intimate contact with the minority portion 11b of the ball 11.” (*See*, Schaich, column 3, lines 39-41). However, Schaich also discloses that “in many instances the use of the gasket 14 may not be necessary and may even be undesirable such as when viscid or sticky liquids are to be applied.” (*See*, Schaich, column 3, lines 48-50). In this case, Schaich discloses that

the ball and closure should be spaced apart creating an arcuate space between the ball and closure. Schaich further states that “this arcuate space or moistening chamber is particularly advantageous when viscid or sticky liquids, and creamy emulsions, such as liquid cosmetic creams, deodorants, and other similar preparations are to be applied.” (*See*, Schaich, column 3, lines 60-63).

In contrast, claim 1 recites

“a container for storing and applying a liquid deodorant, comprising... a tubular cap... comprising an end wall that defines a seating surface for the container in an inverted position, with the end nozzle facing downwardly, wherein the end wall of the cap defines, internally, a concave cradle in the form of a spherical calotte, inside which a corresponding portion of the sphere is seated when the cap is fitted to the tubular body” (emphasis added).

This differs from Schaich which discloses separating the cap from the sphere in the case of storage containers for liquid deodorants.

Thus, one of ordinary skill in the art at the time the invention was made would not be motivated to combine Schaich and Miranda to produce the claimed invention. Schaich discloses a container for liquid deodorants having a cap that is separated from the sphere and not a container with a cap that includes a “concave cradle... inside which a corresponding portion of the sphere is seated.” Claims 2 and 3 depend from claim 1 and should be patentable for at least the same reasons as claim 1. Applicants respectfully request that the rejection be withdrawn.

**CONCLUSION**

Each and every point raised in the Office Action dated June 9, 2005 has been addressed on the basis of the above remarks. In view of the remarks, reconsideration and withdrawal of the rejections are respectfully requested. However, should the Examiner believe that direct contact with the Applicant's attorney would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Dated: August 30, 2005

Respectfully submitted,

By 

Louis J. DeLuicide

Registration No.: 47,522

DARBY & DARBY P.C.

P.O. Box 5257

New York, New York 10150-5257

(212) 527-7700

(212) 527-7701 (Fax)

Attorneys/Agents For Applicant